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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DONALD MILLER, individually and as a co-
successor-in-interest to Decedent DONALD
MILLER II; and NADEEN MILLER,
individually and as a co-successor-in-interest to
Decedent DONALD MILLER II,

Plaintiff,

vs.

CITY OF MONTEREY, a municipal
corporation; ZACHARY REED, individually
and in his capacity as an officer for the Monterey
Police Department; PAUL OELFKE,
individually and in his capacity as an officer for
the Monterey Police Department; KIM ZOOK,
individually and in his capacity as an officer for
the Monterey Police Department; BILL CLARK,
individually and in his capacity as a lieutenant
for the Monterey Police Department; and DOES
1-50, inclusive,

Defendants.

CASE NO.:

COMPLAINT FOR DAMAGES
(42 U.S.C §§ 1983, 1988; and pendent tort
claims)

JURY TRIAL DEMANDED

INTRODUCTION

1
2 1. On October 6, 2015, Decedent DONALD MILLER II was shot to death after
3 Defendant Officers Zachary Reed, Paul Oelfke, Kim Zook, and Bill Clark of the City of Monterey
4 Police Department needlessly provoked a confrontation with Decedent with knowledge that
5 Decedent was in the midst of a mental health emergency and posed no threat of harm.

6 2. This civil rights and wrongful death action seeks compensatory and punitive damages
7 from Defendants for violating the Fourth and Fourteenth Amendment under the United States
8 Constitution and state law in connection with the death of Decedent DONALD MILLER II, who
9 died as a result of the unlawful use of force by the City of Monterey Police Department.

10 3. This action seeks to recover damages for the violation of rights personal to Decedent
11 and the rights of his surviving successors-in-interest, Donald Miller and Nadeen Miller .

JURISDICTION

12
13 4. This action arises under Title 42 of the United States Code, Section 1983. Jurisdiction
14 is conferred upon this Court by Title 42 of the United States Code, Section 1331 and 1343 and 42
15 U.S.C. Section 12188(a). The unlawful acts and practices alleged herein occurred in Monterey
16 California, which is within the judicial district of this Court. This Court also has supplemental
17 jurisdiction over Plaintiff's state law causes of action under 28 U.S.C. Section 1367.

PARTIES

18
19 5. Decedent, DONALD MILLER II was an individual residing in the State of California
20 and a United States citizen. Decedent was unmarried to at the time of his intestate death and died
21 without issue.

22 6. Plaintiff DONALD MILLER ("Plaintiff Donald Miller") is and was at all times herein
23 mentioned the father of Decedent DONALD MILLER II and is a co- successor-in-interest to
24 Decedent DONALD MILLER II.

25 7. Plaintiff NADEEN MILLER ("Plaintiff Nadeen Miller") is and was at all times herein
26 mentioned the mother of Decedent DONALD MILLER II and is a co- successor-in-interest to
27 Decedent DONALD MILLER II.
28

1 8. CITY OF MONTEREY (“City”) is an incorporated public entity duly authorized and
2 existing as such in and under the laws of the State of California; and at all times herein mentioned,
3 Defendant City has possessed the power and authority to adopt policies and prescribe rules,
4 regulations and practices affecting the operation of the City of Monterey's Police Department and its
5 tactics, methods, practices, customs and usage. At all relevant times, Defendant City was the
6 employer of ZACHARY REED, PAUL OELFKE, KIM ZOOK, BILL CLARK, and DOES
7 Defendants, individually and as a peace officers.

8 9. Defendant ZACHARY REED (“Reed”), was an officer for the City of Monterey
9 Police Department, and is sued individually and in his official capacity.

10 10. Defendant PAUL OELFKE (“Oelfke”), was an officer for the City of Monterey Police
11 Department, and is sued individually and in his official capacity.

12 11. Defendant KIM ZOOK (“Zook”), was an officer for the City of Monterey Police
13 Department, and is sued individually and in an official capacity.

14 12. Defendant BILL CLARK (“Clark”), was a lieutenant for the City of Monterey Police
15 Department, and is sued individually and in his official capacity.

16 13. Plaintiffs are ignorant of the true names and capacities of Defendants DOES 1 through
17 50, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff s are informed
18 and believe and thereon allege that each defendant so named is responsible in some manner for the
19 injuries and damages sustained by Plaintiffs as set forth herein. Plaintiffs will amend this Complaint
20 to state the names and capacities of DOES 1-50, inclusive, when they have been ascertained.

21
22 **ADMINISTRATIVE PREREQUISITES**

23 14. Plaintiffs are required to comply with an administrative tort claim requirement under
24 California law. Plaintiffs have exhausted all administrative remedies pursuant to California
25 Government Code Section 910. Plaintiffs filed a claim against the City of Monterey. The claim was
26 rejected by the City of Monterey on May 21, 2016.

FACTUAL ALLEGATIONS

15. Decedent DONALD MILLER II, a homeless man, suffered from paranoia and schizophrenia. On the date of the incident, October 6, 2015, Decedent DONALD MILLER II began to suffer from a mental health emergency.

16. At approximately 2:30 p.m., at or near the Indian Summers Hookah Bar and Grill located at 220 Oliver Street in Monterey California, Decedent DONALD MILLER II was carrying a non-functional replica gun. Decedent DONALD MILLER II was seen walking with the replica gun tucked in his waistband. Shortly thereafter, Defendant officers Reed, Oelfke, Zook, and Clark responded to the scene. When the officers arrived it was readily apparent that the replica gun on Decedent's waistband was not functional. Further, at the time, it was readily apparent that Decedent displayed obvious signs that he was in the midst of a mental health emergency. However, inexplicably, without cause or just provocation, Defendant Officer Reed relentlessly fired his service weapon at Decedent DONALD MILLER II, striking him seven times, including three shots to Decedent's back. Decedent DONALD MILLER II died immediately as a result of his injuries.

17. Plaintiffs allege that at the time Defendant Officer Reed drew his service weapon and shot decedent, there was no immediate exigency to do so.

18. Plaintiffs further allege that the Defendant Officer Reed shot Decedent an excessive number of times, including three shots to Decedent's back, while Decedent was seriously injured and posed no threat of harm to anyone.

19. Plaintiffs allege that Decedent DONALD MILLER II's death was the result of the excessive amount of force used by Defendant Officer Reed.

20. The actions and omissions of City and the Defendant Monterey Police Department Officers were objectively unreasonable under the circumstances, without legal justification or other legal right, done under color of law, within the course and scope of their employment as law enforcement officers and/or public officials, and pursuant to unconstitutional customs, policies and procedures of City and/or other jurisdictions. City was also responsible for Plaintiffs' injuries through its own acts and omissions, negligent and otherwise, by failing to properly and adequately

1 investigate, train, supervise, monitor, instruct, and discipline its law enforcement officers and/or
2 employees and agents, including the officers and officials described herein.

3 21. Plaintiffs further allege that Decedent DONALD MILLER II's death was the
4 proximate result of Defendant City's failure to reasonably train their law enforcement officers in the
5 proper and reasonable use of force and the making of investigations. Plaintiffs further allege that
6 these substantial failures reflect Defendant City's policies implicitly ratifying and/or authorizing the
7 use of excessive force by its police officers and the failure to reasonably train police officers
8 employed by Defendant City in the making of investigations.

9 22. The killing of Decedent DONALD MILLER II described herein was brutal, malicious,
10 and done without just provocation or cause, proximately causing Plaintiffs' injuries and resulting
11 damages.

12 **DAMAGES**

13 23. Plaintiffs were physically, mentally, emotionally and financially injured and damaged
14 as a proximate result of Decedent DONALD MILLER II's wrongful death, including, but not limited
15 to, the loss of decedent's familial relationships, comfort, protection, companionship, love, affection,
16 solace, and moral support. In addition to these damages, Plaintiffs are entitled to recover for the
17 reasonable value of funeral and burial expenses, pursuant to C.C.P. Sections 377.60 and 377.61.

18 24. Plaintiffs are entitled to recover wrongful death damages pursuant to C.C.P. Sections
19 377.60 and 377.61 and Probate Code Section 6402(b).

20 25. Pursuant to C.C.P. Sections 377.30, 377.32, and 377.34, Plaintiffs are further entitled
21 to recover for damages incurred by decedent for deprivation without due process of decedent's right
22 to life, and to any penalties or punitive damages to which decedent would have been entitled to
23 recover, had he lived. For Plaintiffs' Federal claims only, these damages include damages also
24 incurred by decedent consisting of pain, suffering, and disfigurement prior to decedent's death.

25 26. As a further direct and proximate result of the negligence, excessive force and
26 deliberate indifference of defendants, and each of them, Plaintiffs have been deprived of Decedent's
27 financial support.
28

27. The conduct of the individual defendants was malicious, wanton, and oppressive. Plaintiffs, as decedent's successors-in-interest, are therefore entitled to an award of punitive damages against said individual defendants.

28. Plaintiffs found it necessary to engage the services of private counsel to vindicate their rights, and the rights of decedent, under the law. Plaintiffs are therefore entitled to recover all attorneys' fees incurred in relation to this action pursuant to Title 42 United States Code section 1988, and California Civil Code sections 52 and 52.1.

FIRST CAUSE OF ACTION

(Violation of the Fourth Amendment of the United States Constitution)

(42 U.S.C. § 1983- Survival Action)

(Plaintiffs Donald Miller and Nadeen Miller against Defendants Reed, Oelfke, Zook, Clark, and DOES 1-25)

29. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 28 of this Complaint.

30. Defendants' above-described conduct constituted violations of decedent's rights as provided for under the Fourth Amendment to the United States Constitution. These rights include but are not limited to the right to be free from excessive force and/or the arbitrary and/or unreasonable use of force against them.

WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

SECOND CAUSE OF ACTION

(Violations of Plaintiff's 14th Amendment Rights/ Right to Familial Relationship)

(42 U.S.C. § 1983)

(Plaintiffs Donald Miller and Nadeen Miller against Defendants Reed, Oelfke, Zook, Clark, and DOES 1-25)

31. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 30 of this Complaint.

32. Defendants' conduct constituted acts under color of state law, and without due process of law, which deprived Plaintiffs of their right to a familial relationship. Defendants deprived Plaintiffs of these rights by use of unreasonable, unjustified and deadly use of force, causing injuries, which resulted in Decedent's death.

1 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

2 **THIRD CAUSE OF ACTION**

3 ***(Monell - 42 U.S.C. § 1983)***

4 **(Plaintiffs Donald Miller and Nadeen Miller against Defendants City and DOES 26-50)**

5 33. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 32 of this
6 Complaint.

7 34. Plaintiffs are informed and believe and thereon allege that high ranking City officials,
8 including high ranking police supervisors, DOES 26 through 50, and/or each of them, knew and/or
9 reasonably should have known that Defendant officers Reed, Oelfke, Zook, Clark and DOES 1-25,
10 and/or each of them, were either not trained or improperly trained in responding to individuals who
11 were mentally impaired or disabled.

12 35. Despite having such notice, Plaintiffs are informed and believe and thereon allege that
13 DOES 26-50, and/or each of them, failed to ensure that the Defendants were trained or properly
14 trained in responding to individuals who were mentally impaired, resulting in the violation of the
15 Plaintiffs' rights as alleged herein.

16 36. The aforementioned acts and/or omissions and/or deliberate indifference by high
17 ranking City officials, including high ranking City of Monterey Police Department supervisors,
18 Defendants, DOES 26-50, and each of them resulted in the deprivation of Plaintiffs' constitutional
19 rights including, but not limited to the right to be free from unreasonable searches and seizures, as
20 guaranteed by the Fourth Amendments to the United States Constitution. Said rights are substantive
21 guarantees under the Fourth and/or Fourteenth Amendments to the United States Constitution.

22 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

23 **FOURTH CAUSE OF ACTION**

24 ***(Violation of 42. U.S.C. section 12132)***

25 ***(Against all Defendants herein)***

26 37. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 36 of this
27 Complaint.

28 38. As against the Defendant City and DOES 26-50 in his/their capacity as official policy
maker(s) for the City, Plaintiffs further allege that said defendants failed to train, supervise, and or

discipline Defendants Reed, and/or DOES 1-25, in recognizing symptoms of disability under title II of the Americans with Disabilities Act; from excluding qualified individuals such as Decedent DONALD MILLER II from participation in or denial of benefits of services provided by Defendant City, or in otherwise discriminating against such qualified individuals with symptoms of disability recognized under title II of the Americans with Disabilities act, resulting in the shooting of Decedent DONALD MILLER II during the course of the subject-incident and his resulting death.

39. At the time Defendant Officer Reed responded to 2020 Oliver Street in Monterey, Defendant Officer Reed was faced with no reasonable exigency when he drew and fired his service weapon. Said Defendant had no information, and no reasonable belief that anyone was in danger and was aware of Decedent's disability and the symptoms and manifestations of Decedent DONALD MILLER II's recognized disability. The aforementioned conduct of Defendant Officer Reed, and or DOES 1-25, excluded Decedent from participation in, denied Decedent the benefits of Defendant City's programs and activities, and/ or discriminated against Decedent.

40. The exclusion, denial of benefits, and/or discrimination against Decedent DONALD MILLER II was by reason of Decedent's recognized disability.

WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

FIFTH CAUSE OF ACTION
(Wrongful Death - Negligence)
(C.C.P. §§ 377.60 and 377.61)

(Plaintiffs Donald Miller and Nadeen Miller against Defendants Reed, Oelfke, Zook, Clark, and DOES 1-25)

41. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 40 of this Complaint, except for any and all allegations of intentional, malicious, extreme, outrageous, wanton, and oppressive conduct by defendants, and any and all allegations requesting punitive damages.

42. Defendant City, by and through its agents and employees, the involved Defendant Officers' negligent actions and/or negligent failure to act, as set forth herein-above proximately caused the death of Decedent DONALD MILLER II.

43. As an actual and proximate result of said defendants' negligence, and the death of decedent, plaintiffs have sustained pecuniary loss resulting from the loss of comfort, society, consortium, attention, services, and support of decedent in an amount according to proof at trial.

44. As a further actual and proximate result of said defendant's negligence, plaintiffs have incurred funeral and burial expenses, in an amount according to proof at trial.

45. Pursuant to California C.C.P. Sections 377.60 and 377.61, plaintiffs have brought this action, and claim damages from said defendants for the wrongful death of decedent, and the resulting injuries and damages.

WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

SIXTH CAUSE OF ACTION
(Violation of CALIFORNIA CIVIL CODE §52.1)

(Plaintiffs Donald Miller and Nadeen Miller against Defendants Reed, Oelfke, Zook, Clark, and DOES 1-25)

46. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 45 of this Complaint.

47. Defendants' above-described conduct constituted interference, and attempted interference, by threats, intimidation and coercion, with the Decedent DONALD MILLER II's peaceable exercise and enjoyment of rights secured by the Constitution and laws of the United States and the State of California, in violation of California Civil Code §52.1.

WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

JURY DEMAND

48. Plaintiffs hereby demand a jury trial in this action.

PRAYER

WHEREFORE, Plaintiffs pray for relief, as follows:

1. For general damages according to proof;
2. For punitive damages and exemplary damages in amounts to be determined according to proof;
3. For reasonable attorney's fees pursuant to 42 U.S.C. §1988;
4. For cost of suit herein incurred; and

